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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-232-54169 Office: Vermont Service Center Date:

MAR 19 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

PUBLIC COPY



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the manufacture, import, export, and wholesale distribution of fragrances and cosmetics. It has three employees and a projected gross annual income of \$2 million. It seeks to employ the beneficiary as a systems analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation. The director also determined the petitioner had not established that the beneficiary is eligible for an extension of his nonimmigrant status, as provided for in section 106 of the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313, 114 Stat. 1251 (AC21).

On appeal, counsel submits a brief.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the instant petition was not filed timely due to the hostility of the beneficiary's prior employer, and, therefore, the beneficiary is eligible for discretionary relief under AC21. Counsel also submits letters from other businesses attesting to the software design that the beneficiary performed for his previous employer.

Counsel's statement and additional evidence on appeal are not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Develop design and implement Product Management Systems which handle the entire process from raising a requisition till clearing of supplier's bills. Requisition are raised from various departments which are converted to indents by the purchase department [sic];
2. Develop, design and maintain computer-based system to handle the Financial aspects of the operation, such as budget, journal transactions, maintenance of chart of accounts, payroll, accounts receivables, and inventory tracking;
3. Test, implement, design and develop Employee Information Systems;
4. Confer with personnel of all organizational units to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as forms of data input, how data is to be summarized and format for reports.
5. Review computer system capabilities, workflow, and scheduling limitations to determine if requested program or program change is possible within the existing system.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in a computer-related field. The proffered position appears to be primarily that of a computer programmer. It is noted that in two of the letters submitted on appeal for the purpose of corroborating the beneficiary's previous employment, the writers indicated that the beneficiary was employed in the capacity of a computer programmer. In its *Occupational Outlook Handbook*, 2002-2003 edition, at page 168, the Department of Labor (DOL) states, in part, as follows:

Employers using computers for scientific or engineering applications usually prefer college graduates [computer programmers] who have degrees in computer or information science, mathematics, engineering, or the physical sciences . . . Employers who use computers for business applications prefer to hire people who have had college courses in management information systems (MIS) and business and who possess strong programming skills.

The record reflects that the petitioner, which is engaged in the manufacture, import, export, and wholesale distribution of fragrances and cosmetics, employs three persons. The petitioner has not demonstrated that it requires the services of a computer programmer for scientific or engineering applications or that the position requires an individual with a knowledge of sophisticated programming techniques normally associated with the duties of a programmer/analyst.

The duties that the petitioner endeavors to have the beneficiary perform relate to business applications. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as computer science, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, counsel's arguments relating to AC21 need not be examined further in this proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.